LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 21 1953
HAROLD B. WILLEY, Clerk

No. 525

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER

v.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

INDEX

	Page
STATEMENT	1–5
INTERSTATE OR INTRASTATE CHARACTER OF THE SERVICE	5–11
STATUTORY PROVISIONS IN RESPECT TO CARRIER'S LIABILITY FOR PASSENGER'S BAGGAGE	11–19
CARRIER'S RESPONSIBILITY WHERE CHECKS OR RECEIPTS ARE ISSUED FOR BAGGAGE	20–23
RESPONSIBILITY OF CARRIER FOR UNCHECKED HAND BAGGAGE	23–38
CONCLUSION	38

CITATIONS

Adams Express Co. v. *Croninger*, 226 U. S. 491	11, 12, 13
Allen v. *Southern Pac. Co.*, 213 P. (2d) 667	20
Argo v. *S. E. Greyhound Lines*, 33 S. E. (2d) 730	20
Atchison, T. & S. F. Ry. Co. v. *Robinson*, 233 U. S. 173	13
Atlantic Coast Line R. Co. v. *Barksdale*, 124 S. E. 362	27, 32
Borden v. *N. Y. Cent. R. Co.*, 162 N. Y. Supp. 1099	25
Boston & Maine R. R. v. *Hooker*, 233 U. S. 97	12, 13, 20
Campbell v. *Tri-State Transit Co.*, 17 So. (2d) 327	20
Chicago, M. & St. P. Ry. Co. v. *McCaull-Dinsmore Co.*, 253 U. S. 97	37
Franklin v. *So. Pac. Co.*, 265 Pac. 936	27, 29
Galveston, H. & S. A. R. Co. v. *Woodbury*, 254 U. S. 357	9, 20
Gulf, Colorado and Santa Fe Rwy. v. *Hefley*, 158 U. S. 98	19
Hart v. *Pa. R. R. Co.*, 112 U. S. 331	35
Hartsberg v. *New York Cent. R. Co.*, 41 N. Y. S. (2d) 345	9
Hasbrouck v. *N. Y. Cent. and H. R. R. Co.*, 95 N. E. 808	27, 31
Holmes v. *North German Lloyd S. S. Co.*, 77 N. E. 21	27, 33
In Re Commins Amendment, 33 I. C. C. 682	14
In The Matter of Released Rates, 13 I. C. C. 550	24
Jensen v. *Interstate Transit Lines*, 266 N. W. 9	33
Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639	12, 13, 18
Moore v. *Ill. Cent. R. Co.*, 312 U. S. 630	37
Murphy v. *Eastern Greyhound Lines*, 256 N. Y. S. 114	33
Nashville, C. & St. L. Ry. v. *Ham*, 50 S. E. (2d) 831	20
Nashville, C. & St. L. R. Co. v. *Little*, 78 S. W. 1055	27, 33
New York Cent. R. Co. v. *Beaham*, 242 U. S. 148	20, 21
Patton v. *Pennsylvania Greyhound Lines*, 60 N. E. (2d) 945	22

250287—53——1

Posner v. *New York Cent. R. Co.*, 277 N. Y. S. 671
Railroad Co. v. *Fraloff* (1879), 100 U. S. 24
Regulations Concerning Employees Under the Railway Labor Act, 229 I. C. C. 410
Sambur v. *Short Line System of Hudson Transit Lines*, 112 N. Y. S. (2d) 514
Santa Fe Trail Transp. v. *Newlon*, 159 P. (2d) 713
Sayles v. *Interstate Buses Corp.*, 66 N. Y. S. (2d) 377
Slocum v. *Delaware, L. & W. R. Co.*, 339 U. S. 239
Southeastern Express Co. v. *Pastime Amusement Co.*, 299 U. S. 28
Sprout v. *South Bend*, 277 U. S. 163
Slopher v. *Cincinnati Union Terminal Co., Inc.*, 246 I. C. C. 41
Tennessee Coach Co. v. *Carter*, 182 S. W. (2d) 121
Texas and Pac. Ry. v. *Mugg*, 202 U. S. 242
Williams et al. v. *Jacksonville Terminal Co.*, 315 U. S. 386

Page
--- 33
--- 23
abor,
--- 5
112
--- 27, 30
--- 27, 31
--- 27
--- 37
28 11
--- 9
41 6, 7, 8
--- 20
--- 19
--- 6, 7

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER

v.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

STATEMENT

This brief is filed by the Interstate Commerce Commission at the Court's request to express its views on the questions presented by the writ of certiorari granted herein. The facts show:

Respondent, Mrs. George Nothnagle, on October 5, 1949 purchased a ticket for passage upon the trains of petitioner from Meriden, Conn., to New Haven, Conn., and to Fall River, Massachusetts (R. 2). The journey required that she change from one train to another train of petitioner at New Haven, Connecticut. The passage from

Meriden to New Haven was entirely within the State of Connecticut. She arrived at New Haven with her baggage shortly after 11:30 A. M. (R. 7). Upon alighting from the train a redcap, an employee of petitioner, solicited her baggage (R. 7). She surrendered her baggage consisting of a suitcase and its contents to the redcap with orders to have the baggage returned to her at the train leaving for Fall River on Track No. 8 at 12:40 P. M. (R. 7). This was the first train leaving for Fall River after her arrival in New Haven. The baggage was never returned to her (R. 7). The parties have stipulated that the baggage was lost as the result of negligence of the petitioner (R. 8).

Mrs. Nothnagle brought suit against the Railroad in the City Court of Meriden, to recover the value of the baggage (R. 2). Petitioner filed an offer of judgment of $25, contending that that was the limit of its liability under its interstate tariff entitled "New England Joint Tariff R. C. No. 3-N," filed with the Interstate Commerce Commission (R. 4). At the trial the parties stipulated that all the matters alleged in the respondent's complaint were admitted and that petitioner's only defense would be the application of the tariff filed with the Commission (R. 9). Judgment in favor of respondent in the amount of $615, the stipulated value of the baggage, plus costs, was entered September 26, 1950 (R. 4-5).

On November 25, 1952, the Supreme Court of Errors, State of Connecticut, affirmed the judgment of the lower court (R. 14), and on March 9, 1953, this Court granted certiorari.

The said tariff of petitioner provided charges for the handling of hand baggage and other personal effects of passengers by station porters ("red caps") and stated that the railroad would not accept a greater liability than $25 per bag or parcel, or the actual value if less than $25, unless a greater value is declared in writing by the passenger. It provided that additional charges at the rate of 10 cents per bag or parcel will be made for each $100 or fraction thereof above $25 so declared. The tariff further stated that a bag or parcel declared by the passenger to have a value in excess of $500 would not be accepted for handling by red caps.[1]

---

[1] The pertinent provisions of tariff R. C. No. 3–N on file with the Interstate Commerce Commission read as follows:

"RULES, REGULATIONS AND CHARGES

"1—Carriers parties to this tariff do not undertake to furnish Red Cap Service generally or at all stations on their lines, or at all times at stations where such service is furnished. When and where and to the extent that Red Cap Service may be furnished by the carriers for handling the hand baggage and other personal effects of passengers, the carriers' charge for such service will be at the rate of *Fifteen (15) Cents* for each piece so handled, except that in the handling of hand baggage and other personal effects for parties the charge of fifteen (15) cents per piece will apply up to and including ten pieces, and the charge for *more than*

The City Court of Meriden found that the petitioner did not declare in writing any value of her baggage (R. 8); that there was no evidence offered that respondent paid or intended to pay anything of value for handling said baggage (R. 8). The court further found that the red cap gave the respondent no ticket or check in exchange for the baggage, nor any other item with printing or any statement of limitation of liability upon it, and that respondent had no knowledge of the said tariff (R. 8). The court further found that there were no signs posted at any point calling attention of passengers to the fact that the petitioner attempted to limit its liability by the use of the said tariff (R. 8). There was no claim that the redcap orally informed the respondent of any limitation of lia-

---

ten pieces will be at the rate of *One Dollar and Fifty Cents ($1.50) per baggage truck load.*

"2—Carriers will not accept a greater liability than Twenty-five (25) Dollars per bag or parcel, or the actual value of the bag or parcel if said actual value is less than Twenty-five (25) Dollars, for each bag or parcel handled by Red Caps under the provisions of this tariff, unless a greater value is declared in writing by the passenger. If a greater value is so declared in writing by the passenger, an additional charge of *Ten (10) Cents* per bag or parcel will be made for each One Hundred (100) Dollars or fraction thereof above Twenty-five (25) Dollars so declared. Any bag or parcel which is declared by the passenger to have a *value in excess of Five Hundred (500) Dollars will not be accepted for handling* by Red Caps under the provisions of this tariff. Bag or parcel as used in this tariff means a bag or parcel including its contents."

bility or of any limitation of the value of baggage that would be handled.

Two questions are raised:

1. Was the service of the red cap an interstate service governed by Federal Law, or was it an intrastate service governed by the law of the State of Connecticut?

We submit that the redcap service was a part of the carrier's interstate service and was governed by Federal law.

2. Was the carrier's liability limited or excluded by the tariff?

We submit that under the facts of this case the carrier's liability was not limited or excluded by the tariff and that the carrier is liable for the full value of the baggage.

INTERSTATE OR INTRASTATE CHARACTER OF THE SERVICE

Division 3 of the Interstate Commerce Commission, in Ex Parte 72 (Sub. No. 1), *Regulations Concerning Employees Under the Railway Labor Act,* decided September 29, 1938, 229 I. C. C. 410, as to terminals in cities having a population of more than 100,000 population, and on March 29, 1939, in 232 I. C. C. 49, as to terminals in cities having a population of 100,000 or less,[2] held that red caps were employees of the railroads within the meaning of Section 1 of the Railway

[2] The 1940 census figures show the population of Meriden to be 39,494; for 1950 its population was 44,088.

Labor Act, 45 U. S. C. § 151. This issue was carried through several court proceedings, culminating in the decision of this Court in *Williams et al. v. Jacksonville Terminal Co.*, 315 U. S. 386, in which the Court applied the Railway Labor Act to the employer-red cap relationship. One of the contentions of the carriers considered by the Court was that since the charges for red cap service were not filed with the Commission, the treating of tips as compensation for red cap service would be in effect a charge by the terminals for a transportation service, and would constitute a violation of Section 6 (7) of the Interstate Commerce Act. The carriers further contended that this would result in the giving of special rates, in violation of section 2 of that Act because by the carrier's regulations the indigent receive red cap service without charge. This Court stated that "Neither contention, if true, would avail petitioner." P. 408). The Terminal Company admitted by stipulation that the red caps were its employees and that they were engaged in interstate commerce (page 391).

While the *Williams Case* was wending its way through the courts, the Commission (Division 3), on June 25, 1941, decided *Stopher v. Cincinnati Union Term. Co., Inc.*, 246 I. C. C. 41, holding that the service of red caps at the defendant-carrier's station in Cincinnati, insofar as it relates to interstate or foreign commerce, and

defendant's charge for that service, are subject to regulation under the Interstate Commerce Act. An order was entered requiring the defendant-carrier to file with the Commission a tariff containing charges for this service. The Commission pointed out that this decision would serve as a precedent for red cap service at other stations, even though the order would relate only to those charges of the defendant at Cincinnati. This decision of the Commission was noted by this Court in a footnote in its opinion in *Williams* v. *Terminal Co., supra,* page 408.

The Commission's report in *Stopher* v. *Cincinnati Union Term. Co., Inc.; supra,* contains a full description of the services rendered by red caps at that terminal and discusses the application of the Interstate Commerce Act to those services. The services there described include the services rendered the respondent in the instant case. At the Cincinnati terminal the red caps were furnished serially numbered tags which were attached to each piece of baggage, the detachable stub of which was given to the passenger as an identification token. Printed upon this identification stub was certain information, including the following "The Cincinnati Union Terminal Co. limits its liability to $25 on any article handled by Red Cap." (P. 42.) No similar identification stub or token was given to the respondent when her baggage was surrendered to the red cap at New Haven.

The Commission's decision in the *Stopher Case, supra,* contains a full discussion of its reasons for holding that red cap service, insofar as it relates to interstate or foreign commerce, is subject to the Interstate Commerce Act. (See pages 44–46 of 246 I. C. C.)

In the case under consideration, respondents had purchased from the petitioner a ticket for transportation from Meriden, Conn., to New Haven in the same state and to Fall River, Mass. In our view the red cap service was either a terminal service in connection with a continuous through interstate journey from Meriden to Fall River, interrupted only because of the schedules maintained, or else it was a service in connection with the second segment of the journey from New Haven to Fall River, which unquestionably was interstate, and for which the respondent had purchased a ticket. It will be recalled that the red cap was instructed to deliver the baggage to the train leaving for Fall River on Track No. 8 at 12:40 P. M. (R. 7). It is true, as stated by the Supreme Court of Errors, such matters as the terms of a ticket or bill of lading are merely evidence of the interstate character of the movement (R. 16), but we submit that where a passenger is traveling on a through interstate ticket, that is presumptive proof of the character of the journey and is conclusive in the absence of proof to the contrary. This record contains no proof to the contrary.

By all proper standards, respondent was an interstate passenger when she arrived at New Haven. As stated by this Court in *Sprout* v. *South Bend*, 277 U. S. 163, 168:

> "The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce. Compare, *Philadelphia & Reading Ry. Co.* v. *Hancock*, 253 U. S. 284; *Baltimore & Ohio R. R. Co.* v. *Settle*, 260 U. S. 166, 171."

(See also *Galveston, etc. Ry. Co.* v. *Woodbury*, 254 U. S. 357.)

The question whether the terminal services in the handling of baggage of interstate passengers is an interstate service was considered in the much litigated case of *Hartzberg* v. *New York Cent. R. Co.*, 41 N. Y. S. 2d 345; affirmed 51 N. Y. S. 2d 741; appeal denied, 52 N. Y. S. 2d 580; affirmed Appellate Division, 295 N. Y. 703; 65 N. E. 2d 337; certiorari denied, 328 U. S. 849. After quoting the language of section 1 (3) as including, "the receipt, delivery * * * storage and handling of property transported," the Supreme Court of New York stated (41 N. Y. S. 2d 349):

> "[4–6] It is stated in *Pennsylvania R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, 175, 56 S. Ct. 687, 689, 80 L. Ed. 1130, that for the purpose of determining the applicability of the Interstate Commerce Act, interstate transportation begins

* * * when the merchandise has been placed in the possession of a carrier.' See, also, 5 Eliott on Railroads, 3rd Ed., § 2512, pp. 322, 323, 324; 1 Hutchinson on Carriers, 3rd Ed., § 113, p. 110; *Missouri Pac. R. Co.* v. *McFadden,* 154 U. S. 155, 160, 161, 14 S. Ct. 990, 38 L. Ed. 944; *Saffa* v. *Illinois Cent. Ry. Co.,* 218 Mo. App. 502, 279 S. W. 223, 226. The fact that delivery of merchandise or baggage to the carrier precedes the purchase of the ticket for interstate transportation, or that the loss occurs prior to such purchase, does not alter the interstate character of the transportation. *Williams* v. *Central R. Co. of New Jersey,* 93 App. Div. 582, 88 N. Y. S. 434, affirmed 183 N. Y. 518, 76 N. E. 1116; 4 Michie on Carriers [1915], §§ 3348, 3450. Hutchinson on Carriers, Vol. 3, 3rd Ed., § 1281, p. 1524, states: 'The passenger has the right to deliver his baggage to the carrier such time before the starting of the train upon which he intends to take passage as may be reasonably necessary for obtaining a ticket and checking the baggage. From the time delivery is thus made, the carrier will be responsible for its safety as a common carrier.' *Once interstate transportation has begun, it continues and its applicable rules will govern liability for loss of baggage at an intermediate, albeit a wholly intrastate, point of interruption.* (*Franklin* v. *Southern Pac. Co.,* 203 Cal. 680, 265 P. 936, 59 A. L. R. 118, certiorari denied 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Swift* &

Co. v. *United States,* 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518) and after arrival at a wholly intrastate point of destination. *Cleveland C. C. & St. L. Ry. Co.* v. *Dettlebach,* 239 U. S. 588, 36 S. Ct. 177, 60 L. Ed. 453; *Southern R. Co.* v. *Prescott,* 240 U. S. 632, 36 S. Ct. 469, 60 L. Ed. 836. [Emphasis added.]

The Court concluded that, "plaintiffs' trunk was in interstate transportation from the time of its delivery to defendant's baggage room" (p. 350).

We submit that the service of the red cap in the case under consideration was a service in interstate commerce.

If the conclusion that the service in question is subject to the Interstate Commerce Act, is correct, it follows that the liability of the carrier is determinable under the Interstate Commerce Act rather than under the laws of the State of Connecticut. *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 505, 506; *Southeastern Express Co.* v. *Pastime Amusement Co.,* 299 U. S. 28, and cases cited therein.

STATUTORY PROVISIONS IN RESPECT TO CARRIER'S LIABILITY FOR PASSENGER'S BAGGAGE

The limitation of liability of carriers for an interstate passenger's baggage is covered by the Carmack Amendment to the Interstate Commerce Act [49 U. S. C., Section 20 (11)].

Prior to the Carmack Amendment the liability of railroads for the loss of or damage to prop-

erty, including baggage, was governed either by the general common law as interpreted by the Federal courts, or by the laws of the various states. *Boston & Maine Railroad* v. *Hooker,* 233 U. S. 97, 109–110; *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 500–501. By adoption of the Carmack Amendment (June 29, 1906), Congress provided that the carrier receiving property for transportation shall be liable for any loss or damage to such property caused by it or by any carrier to which such property might be delivered, or over whose line such property might pass, and declared that no contract or rule should exempt such carrier from the liability thereby imposed. This amendment was construed as superseding all state law on the subject. *Adams Express Co.* v. *Croninger, supra,* p. 507. Despite the original Carmack Amendment prohibition against limitation of liability, it was regarded as in conformity with the common law and with the Interstate Commerce Act for railroads to publish rates dependent upon the actual value of the goods, declared by the shipper, and this Court held that a statement of a low value for purposes of obtaining a lower rate estopped the shipper from claiming more than a declared value in the event of loss or damage to the shipper. *Kansas City Southern Ry. Co.* v. *Carl,* 227 U. S. 639, 651.

In most of the cases so holding, there was a printed statement in a bill of lading or in a package, check or ticket calling attention to the

limitation, but the doctrine appears to have been broadened and applied so as to hold the shipper with knowledge of the tariffs in the interest of obtaining uniformity of rates to all shippers. *Adams Express Co.* v. *Croninger, supra; Kansas City Southern Ry. Co.* v. *Carl, supra; Boston & Maine Railroad* v. *Hooker, supra.* In the last case, this Court stated (p. 120) that "The effect of the filing gives the regulation as to baggage the force of a contract determining 'Baggage liability'." See also, *Atchison, T. & S. F. Ry. Co.* v. *Robinson,* 233 U. S. 173, 180.

Because of dissatisfaction with the fact that these actual value declarations effected limitations of liability and hardship in that the shippers did not in fact know of the tariff rates varying with the value of the goods, Congress passed the first Cummins Amendment of March 4, 1915, 38 Stat. L. 1196, wherein the section was amended by adding more restrictive words including the imposition of full liability as follows:

> "notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void."

Immediately following the above quoted language, there was added, however, a proviso, reading as follows:

> "*Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules."

This amendment also prohibited a carrier from fixing a period for giving notice of claims shorter than 90 days, for the filing of claims shorter than 4 months, and for the institution of suits shorter than 2 years. Shortly thereafter the Commission had occasion to construe the first Cummins Amendment, for in its report of May 7, 1915, *In Re Cummins Amendment,* 33 I. C. C. 682, in answer to the question as to whether the terms of the Cummins Amendment applied to the transportation of baggage, the Commission, at page 696, said:

> "This must apparently be answered in the affirmative. Transportation of baggage is a part of the contract of transportation

of the passenger. The carriers have always limited their liability for loss of or damage to baggage. The baggage check is the carrier's receipt for the baggage. The conditions attached to the carrier's liability are stated in the fare schedules and on passage tickets of contract form."

As a result of the Commission's construction of the first Cummins Amendment, the second Cummins Amendment was enacted on August 9, 1916, 39 Stat. L. 441, 442, providing that the requirements of the Act respecting liability for full actual loss, damage or injury, notwithstanding any limitation of liability, recovery or representation, agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply to baggage carried on passenger trains, etc.

The second Cummins Amendment eliminated the "hidden from view" proviso quoted at page 14 hereof, and in lieu thereof inserted the following:

> "*Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, *shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers;* second, to property, except ordinary livestock, received for transportation

concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation." [Emphasis added.]

In recommending adoption of this proviso, the Senate Committee on Interstate Commerce stated in its report (p. 2):

> "The construction put upon the [former] proviso by the Interstate Commerce Commission has resulted in some vexatious requirements insisted upon by carriers and

> in some injustice. For instance, it has been held by the commission that under the proviso the carrier may compel the shipper to state the value of the goods tendered for shipment and that if the true value is not stated the shipper is liable to criminal prosecution under section 10 of the act to regulate commerce. The committee does not agree with the commission in the interpretation so placed upon the proviso, but there is no way in which to remedy the matter except to make the intent of Congress so clear that it is impossible to misunderstand it. Further, the commission has held that baggage carried on passenger trains upon the ticket of a passenger is within the terms of the law. Whether this construction is correct or incorrect, it is palpable that baggage so transported on a passenger fare ought not to be subject to the rule which controls ordinary freight, and in the bill now reported it is excepted in express terms." *Report No. 394, 64th Congress, 1st Session.*

Similar remarks were made in its reports by the House Committee on Interstate Commerce.

Under the proviso of the second Cummins Amendment, carriers can limit their liability by special contract. The limitations set up by such contracts, however, must be fair and reasonable and based on sufficient consideration. Value has long been recognized as a legitimate element in rate making. A carrier may set a certain limit

for liability for loss or damage to property valued up to a stipulated amount, but since the passenger may hold the carrier to its common law responsibility up to the actual value of any property transported, the carrier must also make provision therefor by providing higher rates to take care of property of greater value. The lower valuation gives the passenger less protection in consideration for the lower rate. In other words, the rates are commensurate with the risk involved, dependent upon the valuation placed by the passenger. In reality, therefore, it is a contract founded upon the value of the property entrusted to the carrier and not a limitation of liability. This Court in *Kansas City S. R. Co.* v. *Carl*, (1913) 227 U. S. 639, stated, page 650:

> "* * * A declared value by the shipper for the purpose of determining the applicable rate, when the rates are based upon valuation, is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law. * * * In the leading case of *Hart* v. *Pennsylvania R. Co.*, 112 U. S. 331, the right of the carrier to adjust the rate to the valuation which the shipper places upon the

> thing to be transported is the very basis upon which a limitation of liability in case of loss or damage is rested. This is an administrative principle in rate-making recognized as reasonable by the Interstate Commerce Commission, and is the basis upon which many tariffs filed with the Commission are made. *Matter of Released Rates*, 13 Inters. Com. Rep. 550."

In view of the statutory provision above cited, carriers are required to publish and file with the Commission all rates and regulations which limit their liability on baggage, the passenger being given the choice of rates depending on valuation. Tariffs duly published and filed with the Commission constitute notice to the public of the rate properly assessable, although the shipper may have no actual knowledge thereof. *Gulf, Colorado and Santa Fe Rwy.* v. *Hefley*, 158 U. S. 98; *Texas and Pac. Railway* v. *Mugg*, 202 U. S. 242. Whether or not a regulation so filed limiting the carrier's liability on baggage is binding on passengers who had no knowledge or notice thereof, either actually or impliedly, by way of receipt or check for the baggage showing the terms and conditions under which the carrier limits its responsibility, is the question to be determined in this case. The answer is dependent upon the nature of control exerted by the carrier over the baggage in question.

CARRIER'S RESPONSIBILITY WHERE CHECKS OR RECEIPTS ARE ISSUED FOR BAGGAGE

In instances where checks or receipts for baggage are issued by the carrier, the cases hold that the passenger is bound by the tariff of the carrier limiting its liability, even though the passenger claims to have no knowledge thereof. *Galveston, H. & S. A. R. Company* v. *Woodbury,* 254 U. S. 357; *New York Central R. Co.* v. *Beaham,* 242 U. S. 148; *Boston and Maine R. R.* v. *Hooker,* 233 U. S. 97; *Tennessee Coach Company* v. *Carter,* 182 S. W. (2d) 121; *Allen* v. *Southern Pac. Company,* 213 P. (2d) 667; *Campbell* v. *Tri-State Transit Company,* 17 So. (2d) 327; *Argo* v. *S. E. Greyhound Lines,* 33 S. E. (2d) 730; *Nashville, C. & St. L. Ry.* v. *Ham,* 50 S. E. (2d) 831.

In *Galveston, H. & S. A. R. Company* v. *Woodbury, supra,* it appeared that the plaintiff was not told when she purchased her ticket or when she checked her trunk that there was any limitation on the amount of the carrier's liability. The testimony did not indicate whether the ticket purchased contained notice of any such limitation. The defense was that the company was not liable for more than $100 since it had filed and published a tariff limiting the liability to that amount, unless the passenger declared a higher value and paid excess charges, which Mrs. Woodbury had not done. The Court concluded that the carrier and passenger were bound by the provisions of the published tariff.

The case of *New York Central R. Co.* v. *Beaham, supra,* involved a passenger who had purchased a railroad ticket, presented it at the baggage department and received a check for her trunk. The face of the check read, "See conditions on back. Value not stated." On the back, this was printed:

> "Notice to Passengers. Baggage consists of a passenger's personal wearing apparel and liability is limited to $100 (except, a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by owner at time of checking and payment is made therefor."

When the trunk was lost the railroad company admitted responsibility for $100 and claimed exemption from any larger recovery because of the limitation specified in the ticket; also because the same limitations were imposed in its tariff schedules on file with the Commission. Although the lower court had affirmed a judgment for $1,771.52, this Court found that the acceptance and use of the ticket sufficed to establish an agreement *prima facie* valid which limited the carrier's liability. It further stated that the mere failure of the passenger to read the matter printed on the ticket could not overcome the presumption of assent.

In all the above-cited cases receipts or checks were given for the baggage. Such checks provide visible means of directing the passenger's atten-

tion to the limitation of liability assumed by the carrier. Normally, the conditions under which the carrier accepts the baggage are printed on such baggage receipts or checks and thus the passenger is deemed to have been put on notice, actually or impliedly, of the extent of the carrier's liability in the event of loss or damage to his baggage.

In *Patton* v. *Pennsylvania Greyhound Lines*, 60 N. E. (2d) 945, the court held:

> "We therefore conclude that, under certain circumstances, there may be a limitation of baggage liability under the Interstate Commerce Act for baggage carried on motor buses as well as on railroad trains or boats.
>
> And in connection with the facts in this case, we determine that the 'certain circumstances' heretofore mentioned have been fully met by * * * (2) the *notice to the passenger of such a baggage limitation, printed on his baggage receipt* as well as on his passenger ticket * * *." [Emphasis supplied.]

The rule applicable is stated in 10 Am. Jur., Carriers, Section 1745, page 452:

> "It is well settled that in order to charge a passenger with notice of stipulations limiting liability, actual or implied knowledge thereof must be shown, as the limitations can only arise by virtue of contract, express or implied. This knowledge must

> have been acquired at the time of the purchase of the ticket of transportation, or at least prior to entering upon the journey. It has been held that in order to charge the passenger with notice, the provisions in the ticket should be specifically called to his attention, or else presented to the general public in such a manner as to raise a presumption of knowledge thereof in the passenger."

In Section 1747, 10 Am. Jur., page 453, it is stated that the carrier must show that the passengers either expressly or impliedly agreed to the limitation.

RESPONSIBILITY OF CARRIER FOR UNCHECKED HAND BAGGAGE

Even before the passage of the Interstate Commerce Act, decisions of the courts indicate that it was the rule that the passenger should be notified in some manner of the basis upon which the transportation of baggage was assumed by the carrier. This is manifest from the opinion in *Railroad Company* v. *Fraloff*, (1879), 100 U. S. 24, 27, in which this Court affirmed an award of $10,000 to a passenger for rare and valuable laces included in her baggage, which had been lost by the railroad. It is to be noted that at that time the carrier had no rule in effect limiting its liability as to baggage. The Court stated:

"* * * It is undoubtedly competent for carriers of passengers, by specific regulations, *distinctly brought to the knowledge of the passenger,* which are reasonable in their character and not inconsistent with any statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such regulations may be practically effective, and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies." [Emphasis supplied.]

The statute makes no provision for the legal obligation of carriers on unchecked baggage, and, therefore, the common law responsibility of the carrier attaches. On this point the Commission, *In The Matter of Released Rates,* 13 I. C. C. 550, stated at page 552:

"In the absence of express stipulation, the liability of a common carrier is not lim-

> ited to loss occasioned by its negligence or other misconduct. The law has cast upon it an extraordinary responsibility; it is to a large extent an insurer of the goods entrusted to it for carriage. The rule, roughly stated, is that a common carrier is liable for all losses not occasioned by the Act of God or the public enemy * * *. We are of opinion, in short, that in the absence of agreement or notice, the carrier's liability is governed by the ordinary common-law rule."

At common law, the liability of carriers has a dual aspect—the liability practically as an insurer, and its liability for negligence on the part of itself or its servants. (5 R. C. L., p. 187, Section 803.)

Where no check or receipt is issued, the element of implied knowledge of the carrier's regulations providing for limitation of liability cannot be imputed to the passenger. Under such circumstances, the measure of responsibility assumed by the carrier for the handling of hand baggage is contingent upon the degree of control exercised over it by the carrier or its employees.[3] The general principles which apply and the nature of the carrier's responsibility as to hand

---

[3] A very interesting discussion of the historical background for present-day statutory law concerning a carrier's liability with regard to a passenger's baggage is contained in *Borden v. New York Cent. R. Co.*, 162 N. Y. Supp. 1099.

baggage is described in the following statement in 5 R. C. L., Section 795, page 176:

> "With regard to hand baggage, the question of the duty and liability of the carrier seems ordinarily to depend upon who has the custody or control of the baggage. If the passenger has entire control and custody to the exclusion of the carrier, then the carrier cannot be held as an insurer, and will not be liable at all, unless guilty of negligence which results in its loss or damage, in the absence of contributory negligence on the part of the passenger. The element of the degree of control respectively exercised by the passenger and the carrier enters largely into the decisions in the American cases; and the degree of liability varies with the degree of possession. So when a passenger delivers his suit case to the agent of the carrier for the purpose of having it carried on the conveyance in accordance with the custom of the carrier, it does not, necessarily, become an insurer thereof. Its possession is that of a bailee, and the law of bailments measures its obligation to the plaintiff. Whether it is a bailee for hire performing a service incidental to carriage as a passenger with the obligation of ordinary care, or a gratuitous bailee with the obligation of slight care, the loss of any or all of the property so intrusted to it raises a presumption of negligence which in the absence of explanation makes the carrier liable."

In the following instances, the passenger's baggage was unchecked but was surrendered to and placed in the exclusive possession and control of the carrier. Accordingly, the carriers were held responsible for the full value of the lost baggage. *Sayles* v. *Interstate Buses Corporation,* 66 N. Y. S. (2d) 377; *Franklin* v. *So. Pac. Company,* 265 Pac. 936, cert. den. sub nom., 278 U. S. 621; *Sambur* v. *Short Line System of Hudson Transit Lines,* 112 N. Y. S. (2d) 514; *Santa Fe Trail Transp. Co.* v. *Newlon,* 159 P. (2d) 713; *Hasbrouck* v. *New York Central and H. R. R. Co.,* 95 N. E. 808; *Atlantic Coast Line R. Co.* v. *Barksdale,* 124 S. E. 362; *Nashville, C. & St. L. R. Co.* v. *Lillie,* 78 S. W. 1055; *Holmes* v. *North German Lloyd S. S. Company,* 77 N. E. 21.

In *Sayles* v. *Interstate Buses Corporation, supra,* the passenger boarded a bus on an interstate journey. Although the passenger did not offer her bag to the driver who was standing at the door of the bus, he took it from her, but gave her no check or receipt. At destination the bag was missing and she sued for full value of the bag and contents, alleging a value of $300. The defense was that the liability of the defendant under rates duly filed with the Interstate Commerce Commission was limited to $25. In determining whether the carrier had by its duly filed rates limited its liability under the circumstances of this case, the court considered printed

notices posted in the depot of the carrier, which stated:

> "Baggage will be *checked* and transported subject to provisions of tariffs lawfully in effect. Tariffs include the following provisions:
>
> "Free Baggage Allowance
>
> "For each adult ticket *you may check,* without additional charge, baggage not exceeding $25.00 in Value and 150 Pounds in Weight
>
> * * * * *
>
> "Carrier's liability in the Event of Loss or Damage Will Not Exceed $25.00 for one or more pieces of baggage *checked* on an adult ticket unless * * *
>
> * * * * *
>
> "Unchecked Baggage
>
> "Carrier will not accept any liability for baggage or other property not checked. Such baggage is the sole responsibility of the passenger."

And again in its time table, it has the following:

> "Baggage Liability—This company will not be responsible for Baggage unless *properly checked* at the time passenger boards coach. Liability limited to $25.00." [Emphasis in original.]

The court construed the language above as indicating that the carrier interpreted the limita-

tion contained in its filed tariff as applicable only to checked baggage. In this case, as the passenger did not check her baggage, the court concluded that the common law rule of responsibility applied and held the carrier, in assuming full custody and control of the baggage, to be a bailee liable for its negligence in the loss of the baggage.

In the case of *Franklin* v. *So. Pac. Co., supra,* the court was dealing with red cap service wherein a tariff regulation was published with the Interstate Commerce Commission as follows:

> "* * * Where red cap porter service is provided, hand baggage will be handled without charge by red cap porters to and from trains of Southern Pacific Company. Liability upon hand baggage handled by red cap porters will be limited to $25."

It was held in this case that the tariff regulation, as published, did not give a choice of rates and was not like the regulations filed with the Commission as to checking baggage which did give such a choice. The question then was whether there was any difference in this respect between hand baggage and checked baggage in a case where no graduated scale of valuation is allowed. The court then observed:

> "* * * We can think of no reason why there should be any difference between baggage in the custody of a porter as a servant

of the carrier, and lost through his negligence, and baggage in the custody of a baggageman, likewise a servant of the carrier, and lost through his negligence. It seems clear on principle that the case before us is the same as though the baggage had been tendered for checking and lost in the process of checking or the shipper had been denied the right to secure full protection and had been given no alternative but to accept the limited valuation against negligence placed thereon by the carrier, which, as above shown, is illegal from its inception. This is not a case of joint control with the passenger nor a case where the passenger's conduct or negligence in any way contributed to the loss. It is a clear case of loss by negligence where the control was exclusively in the carrier, who had allowed no opportunity to the shipper to secure better protection from loss or damage."

In *Sambur* v. *Short Line System of Hudson Transit Lines, supra,* two bags were left near the bus pursuant to direction of defendant's driver, to be placed in the baggage compartment of the bus located under the floor. No check, token or mark was issued or employed by the defendant to verify plaintiff's baggage. Defendant contended that its liability was limited to the sum of $50 ($25 for each bag) under federal regulations governing interstate transportation by common carriers.

The court concluded that the passenger's baggage was not "checked" within the meaning of the baggage regulations and that, therefore, plaintiff was entitled to recover full value of his loss.

In *Santa Fe Trail Transp. Co.* v. *Newlon, supra,* plaintiff secured passage on defendant's bus for an interstate journey and did not check her hand baggage because she wanted to retain its custody during the journey. Defendant's driver required plaintiff to deposit the bag with him before he would permit her to enter the bus. When she reached her destination, the bag could not be found. Defendant argued that, under the provisions of the Interstate Commerce Act and its tariff in force and effect at the time, the amount of plaintiff's recovery for the loss of her bag could not exceed the sum of $25.00. The court ruled that neither the Interstate Commerce Act nor the carrier's tariff was applicable to unchecked baggage and stated at page 715:

> "If the defendant desired the tariff to apply to unchecked baggage of a passenger, it was unnecessary to use clear and unambiguous language in its provisions. Having failed to so do, and having interfered with plaintiff's admitted right to take her hand baggage into the bus, and assumed exclusive control of her baggage, the defendant should be held liable."

In *Hasbrouck* v. *New York Central and H. R. R. Co., supra,* the question there was likewise

one of negligence as a bailee in the manner in which a porter handled the hand baggage of a passenger. The court held that a provision on a passenger ticket that the company assumes no risk over $100, except by special contract, applied only to baggage regularly checked and not to hand baggage retained in possession of the passenger, except temporarily in getting on and off the train. Upon the particular facts of this case, the court held the relationship of bailor and bailee was established, and that the carrier was liable for the jewelry and money in the suitcase carried as hand baggage missing from it when returned to her by the trainman who had taken it to assist her off the train.

In *Atlantic Coast Line R. Co.* v. *Barksdale, supra,* paragraph 3 of the syllabus states:

> "The duty placed upon the passenger by the requirements of the Interstate Commerce Commission to declare the value of baggage, and limiting the carrier's liability in case of loss to such declared valuation, applies only to baggage which the passenger has surrendered to the custody of the carrier for the purpose of being transported, as when baggage is 'checked' and does not apply to hand baggage taken into the coach by the passenger and generally retained in the passenger's possession, but only temporarily placed in the custody of the train officials for the passenger's accommodation and convenience

when entering or leaving the train. As to such hand baggage, there is, therefore, no duty resting upon the passenger to declare its value or the nature of its contents."

(Cf. *Nashville, C. & St. L. R. Co.* v. *Lillie, supra; Holmes* v. *North German Lloyd S. S. Company, supra.*)

In other cases involving buses where a passenger's baggage was not checked but merely placed on the rack in view of the passengers, it has been held that the carrier was not liable for loss thereof. The facts in these decisions indicate that the custody and possession of the luggage had not been turned over exclusively to the control of the carrier; therefore, the carrier could not be held responsible as an insurer. *Jensen* v. *Interstate Transit Lines,* 266 N. W. 9; *Posner* v. *New York Central R. Company,* 277 N. Y. S. 671; *Murphy* v. *Eastern Greyhound Lines,* 256 N. Y. S. 114.

Returning now to the facts in the case before the court:

The carrier's tariff covering the handling of baggage quoted herein on pages 3–4 provides for limitations of liability and charges on excess value. It does not, however, provide the manner in which agreements of passengers to such limitations shall be obtained. In the absence of any provisions covering that subject, it would seem that the general common law practice would be implied. In this case the record indicates that

no notices were posted in the station calling attention to the proposed limitation, the respondent was not given any receipt, check or other written notice containing information that a limitation was proposed, and that she had no knowledge of the tariff provision. In fact, it appears that the carrier did nothing more than publish, post and file the tariff and took no other steps towards bringing the matter to the attention of the passenger or of obtaining the consent of the passenger to a limitation. The publication and filing of such a purported limitation, unknown to all its customers, except conceivably to a very few, without otherwise bringing the matter to the attention of travelers, serves to entrap the unwary, regardless of the good faith of the carrier.

Paragraph "2" of the Rules, Regulations and Charges in the carrier's tariff, which deals with the subject of limitation of liability begins,

> "Carriers will not accept a greater liability than twenty-five (25) dollars. * * *." (See page 4 herein.)

The words, "will not accept," clearly imply negotiation and agreement, such as would be appropriate under the common law and under section 1 (5) of the Interstate Commerce Act, requiring all transportation charges to be just and reasonable. At common law a proposed limitation must in fact be brought to the attention of the shipper and he must be allowed to choose between a full

common law liability or a limited liability for a consideration. (*Hart* v. *Pennsylvania R. R. Co.*, 112 U. S. 331, 343.)

The claimed and stipulated value of the lost baggage is $615 (R. 4–5). Paragraph "2" of the carrier's tariff provides,

> "Any bag or parcel which is declared by the passenger to have a value in excess of Five Hundred (500) dollars will not be accepted for handling by red caps under the provisions of this tariff. Bag or parcel as used in this tariff means a bag or parcel including its contents."

This provision does not say that bags or parcels of a value exceeding $500 will not be handled, or will be refused; it says that such baggage will not be accepted if the passenger declares a value greater than $500. The purpose obviously is not to refuse to handle bags or parcels of a value exceeding $500 in value, but to limit liability. Again it appears that this maximum value rule was not brought to the attention of the public or of the respondent by any effective means, and that the only action was to publish, post and file the tariff.

Assuming, however, that this rule is a valid declaration that such parcels will not be accepted, it would be the duty of the carrier to exercise that claimed right in order to protect itself. The mere placing of such a provision in its tariff, according to the carrier's theory, imposes upon

every passenger the duty of examining the carrier's tariff and refraining from allowing the red caps to handle his bags if they exceed the stated value.

If the carrier contends that in the rush of passengers to and from trains it is impracticable to bring these limitations to the attention of passengers, it should explain how it is practicable for passengers to examine its tariffs before dealing with its red caps under the same circumstances. The fact is, as indicated by the record in this case, the carrier has made no effort to inform its customers of the proposed limitations, other than filing the tariff. It would appear that its object is not to have the passengers make the choice of liabilities which the tariff and the law allows, but merely to relieve itself from liability for claims.

We submit that the tariff, as worded, does not establish a limitation of liability but is nothing more than a statement of rates and a statement of policy the carrier will follow in dealing with its patrons. As such it will be bound by the tariff in that it may not charge more than the published rates, and it must follow those rules in its dealings with passengers. The tariff says nothing, however, as to how the desires of the passenger shall be ascertained. The notice of value must be in writing; but there is no showing of any procedure for the obtaining or making of such statements.

There are only two ultimate questions for the Court to decide, (1) was the service a service in interstate commerce, and (2) does the mere posting and filing of the tariff, with no further action by the carrier to obtain the assent of the passenger or to bring the matter to his attention, the passenger having no knowledge of the tariff, operate to limit or eliminate the carrier's liability.

If the carrier had taken steps to bring these matters to the attention of passengers, such as by posting notices in its stations and giving a check or stub with notice of the limitation stated thereon, the reasonableness of such practices might be an issue for initial determination by the Commission. But where, as here, the only action taken by the carrier is to file a tariff, the question whether that, alone, is sufficient to bind the passenger is, we submit, a question which may be initially determined by the court. Loss and damage claims are for determination by the courts and the court may make such determinations as are necessary to dispose of those matters. See *Chicago, M. & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, in which the Court held invalid bill of lading and tariff provisions which limited the carrier's liability. Compare *Moore* v. *Ill. Cent. R. Co.* 312 U. S. 630, 634, as interpreted in *Slocum* v. *Delaware L. & W. R. Co.*, 339 U. S. 239, 244–45, in which the Court decided, in an action for damages, questions

which would have required an initial decision by the Railway Labor Board if they had related to future conduct.

CONCLUSION

Acceptance, actual or implied, by the passenger of the terms under which the carrier assumes responsibility for transportation of baggage must be shown in some manner before the carrier may be charged only with limited liability. If a check or receipt for the baggage is issued at the time the passenger starts on his interstate journey, then knowledge of the carrier's regulations is imputed thereby. A different situation is presented where the passenger has not checked his baggage and the porter or other employee of the carrier exercises complete dominion and control over it. The relationship of bailor and bailee is then established, and the unexplained non-delivery of such baggage creates an obligation on the part of the carrier to reimburse the passenger for the full value thereof.

We submit that the Court should affirm the decision of the Supreme Court of Errors, for the reasons suggested herein.

Respectfully submitted.

EDWARD M. REIDY,
Chief Counsel,
Interstate Commerce Commission.

APRIL 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953